

Exhibit 31

EDGCOMB LAW GROUP

115 Sansome Street, Suite 700
San Francisco, California 94104
415.399.1943 direct
415.399.1885 fax
dchapman@edgcomb-law.com

April 29, 2010

BY EMAIL & U.S. MAIL

Ross Atkinson
Associate Engineering Geologist
Waste Discharge to Land Unit
Central Valley RWQCB – Sacramento
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670-6114

Re: Mt. Diablo Mercury Mine – Nevada Scheelite / Kennametal Documentation
December 1, 2009 Order to Submit Investigative Reports Pursuant to Water Code Section 13267,
Mount Diablo Mine, Contra Costa County

Dear Mr. Atkinson:

This letter concerns the Order to Submit Investigative Reports Pursuant to Water Code Section 13267, Mount Diablo Mine, Contra Costa County, ("13267 Order") concerning the Mt. Diablo Mercury Mine ("Site") issued by the Central Valley Regional Water Quality Control Board ("Regional Board") to Kennametal, Inc. ("Kennametal"), on December 1, 2009.

In response to a request from the Regional Board, we provide the following information and documents regarding Kennametal's connection to the Mt. Diablo site. Based on the attached March 25, 1956 Director's Meeting Minutes of former Site owner Mt. Diablo Quicksilver Co., Ltd. ("MDQ"), on February 28, 1956, MDQ executed an assignment of the Cordero Mining Company ("Cordero") lease to Nevada Scheelite Corporation ("Nevada Scheelite"). Present at that meeting were Mr. Ray Henricksen and Mr. John M. Gomes, representing Nevada Scheelite. They reported that Nevada Scheelite had been forced to halt pumping operations from the underground areas of the Site by downstream neighbors. Complaints had been filed regarding excess salt and iron in the waters flowing from the mine. Mr. Henricksen acknowledged that Nevada Scheelite was a wholly-owned subsidiary of Kennametal Inc., with head offices in La[t]robe, Pennsylvania. We also attach an April 18, 1956 letter from Tidewater Associated Oil Co. to Mr. John Gomes of Nevada-Scheelite that offers to provide the delivery of various petroleum products to the Site over the next year at the listed prices, which is consistent with Nevada-Scheelite having conducted operations at the site. We trust you will find these documents useful.

Mr. Ross Atkinson
Re: Kennametal/Nevada Scheelite
April 29, 2010

Finally, can you please advise us as to whether and, if so, how Kennametal has responded to the Regional Board's 13267 Order? Also, based on this evidence and others, can you please advise us as to whether the Regional Board intends to add Kennametal as a respondent discharger to the Revised Technical Reporting Order R5-2009-0869, issued by the Regional Board to Sunoco, et al., on December 30, 2009?

Thank you. Please call me or John Edgcomb if you have any questions.

Very truly yours,

A handwritten signature in black ink, appearing to be "David T. Chapman", written over a horizontal line.

David T. Chapman

Attachments (2)

cc: Victor Izzo, Senior EG, Regional Board
Patrick Pulupa, Esq.
Gary Riley, EPA Region 9
Larry Bradfish, Esq., EPA Region 9

MINUTES
DIRECTORS' MEETING - MARCH 25, 1956
Mt. Diablo Quicksilver Co., Ltd.

A meeting of the directors of the Mt. Diablo Quicksilver Co., Ltd. was held at its office on the mine property near Clayton, California on March 25, 1956.

Present: Vic Blomberg, P. W. Cox, G. L. Henry, A. E. Moni, Dorothy Lanning and Harold Blomberg.

The minutes of the previous directors' meeting dated January 29, 1956, were read and approved.

V. Blomberg reported that he had met with the officials of Black Mammoth Consolidated Mining Co. to come to a working agreement with our company. However, it appeared that Black Mammoth would not be able to come to the property and start operating and developing immediately, which would be necessary in order to take advantage the high flow of water in the lower streams for purposes of dewatering the mine shaft and underground tunnels. It was Black Mammoth's suggestion that an agreement be reached with Nevada Scheelite Corporation to start work on the property on a participating arrangement with them.

Accordingly our company, on February 28, 1956, executed an assignment of the Cordero Mining Co. lease to Nevada-Scheelite Corporation. After discussion, it was moved by P. W. Cox and seconded by A. E. Moni, that the Board approve the assignment of our lease agreement with Cordero Mining Co. to the Nevada-Scheelite Corporation. Motion was unanimously approved.

V. Blomberg introduced Mr. Ray Henriksen and Mr. John M. Gomes, representing Nevada Scheelite Corporation. These men reported that they had been forced to halt pumping operations from the underground areas by our downstream neighbors. Complaints had been filed regarding excess salt and iron in the waters flowing from the mine. Mr. Henriksen stated that his company would do everything possible to solve the problem, but that it appeared that certain of the downstream group were on the verge of starting suit, and that his company would not want to be involved in such trouble.

Mr. Henriksen reported on the history and financial worth of Nevada Scheelite Corporation. He stated that this company is a wholly-owned subsidiary of Kennametal Inc., with head offices in Labrobe, Pennsylvania. According to reports on file this company's present net earnings exceeded \$80,000.00 per month. After some discussion, Mr. Henriksen and Mr. Gomes were excused from the meeting.

The Secretary reported that he had received financial statements of Kennametal, Inc., and that the company appeared to be in excellent financial position.

The President reported that Nevada Scheelite, Inc. have agreed to our amendments outlined in our minutes of January 29, 1956, after they had been on the property ninety days, except for the provision for working a minimum of 120 shifts per month; which provision would be modified slightly.

Discussion followed regarding plans for holding the annual stockholders' meeting in April, 1956. The Board discussed the practicability of holding a meeting on a Saturday rather than on a Sunday. It was felt that since a number of stockholders have objected to holding a business meeting on Sundays, we should consider holding our coming meeting on a Saturday.

Dorothy Lanning moved, seconded by A. E. Moni, that the regular meeting of stockholders be held at this office on Saturday, April 28, 1956, for the purpose of electing directors for the ensuing year and to transact any other business as may properly come before such meeting; the meeting would be called to order at 1:00 p.m.



TIDE WATER ASSOCIATED OIL COMPANY
Alameda, California

April 16, 1956

Nevada Scheelite Corporation
c/o Cordere Mining Corporation
Clayton, California

Attention: Mr. John Gomes

Gentlemen:

We are pleased to offer herein delivery of the following products, F.O.B. your plant, Clayton, California, during the year ending April 30, 1957, and continuing thereafter, subject to cancellation on ninety days written notice, at prices posted by Seller at time and place as applicable to four hundred gallon deliveries, less:

<u>Product</u>	<u>Discount Per Gallon</u>	<u>Method of Delivery</u>
Gasoline	\$.01	Tank Truck
Motor Diesel Fuel	.02	Truck & Trailer
Automatic Burner Oil	.02	Truck & Trailer

For information only, Seller's prices per gallon to Buyer on this basis, as of date hereof, are:

<u>Product</u>	<u>Price Per Gallon*</u>	<u>Method of Delivery</u>
"Flying A" Gasoline	\$.239	Tank Truck
"Flying A" Ethyl	.269	Tank Truck
Motor Diesel Fuel	.112	Truck & Trailer
Automatic Burner Oil	.112	Truck & Trailer

*Gasoline prices include present State Motor Vehicle Fuel and Federal Excise taxes. Any other taxes are excluded from the above prices and if applicable will be payable by Buyer.

If this proposal has your approval, please so indicate on or before April 30, 1956, and we will forward contract for your signature.

Yours very truly,

TIDE WATER ASSOCIATED OIL COMPANY

Original Signed
A. H. Zinkand

A. H. Zinkand
Oakland Zone Supervisor

RLO/jm

Exhibit 32

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San Francisco, California 94104
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dchapman@edgcomb-law.com

July 22, 2010

BY EMAIL & U.S. MAIL

Ross Atkinson
Associate Engineering Geologist
Waste Discharge to Land Unit
Central Valley RWQCB – Sacramento
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670-6114

Re: Mt. Diablo Mercury Mine Insurance Policies

Dear Mr. Atkinson:

This letter concerns the Revised Technical Reporting Order R5-2009-0869 issued pursuant to Section 13267 of the California Water Code regarding the Mount Diablo Mine, Contra Costa County ("Rev. Order") concerning the Mt. Diablo Mercury Mine ("Site") issued by the Central Valley Regional Water Quality Control Board ("Regional Board") to Sunoco, Inc., ("Sunoco"), and other alleged dischargers on December 30, 2009.

The purpose of this letter is to bring the Regional Board's attention to historical insurance policies related to the Site that Sunoco has identified.

The Mt. Diablo Quicksilver Co., Ltd. ("MDQ"), owned and leased the Site from 1931-1960. Our research indicates that MDQ held insurance policies through various insurance brokers or insurers. Sunoco respectfully requests that the Regional Board issue subpoenas to the following entities in order to determine whether any insurance policies cover property damage at the Site. We enclose Site-related documents involving these entities.

1. Marsh & McLennan Companies
1166 Avenue of the Americas
New York, NY 10036
Tel.: (212) 345-5000

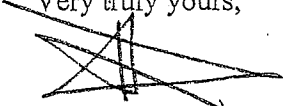
Ross Atkinson
Re: Mt. Diablo Insurance Policies
July 22, 2010

2. Insurance Services Office, Inc. ("ISO")(successor to Pacific Fire Rating Bureau)¹
Insurance Services Office, Inc.
Newport World Business Center
545 Washington Blvd
Jersey City, NJ 07310-1686
Tel.: (800) 888-4476
Fax: (201) 748-1472

One of the enclosures is an 11/8/59 check register stub for an Audit Premium payment to Marsh & McLennan Cosgrove & Co., which references **Policy No. 9MLP28596**. Please ensure that the subpoena to Marsh & McLennan specifically references this policy number in addition to a more general search request for any documents related to the Mt. Diablo Quicksilver Co., Ltd.

Please call me or John Edgcomb if you have any questions.

Very truly yours,



David T. Chapman

Enclosures

cc: Victor Izzo, Senior EG, Regional Board
Patrick Pulupa, Esq.

¹ ISO is an organization that collects statistical data, promulgates rating information, develops standard policy forms, and files information with state regulators on behalf of insurance companies that purchase its services.

P. O. Box 133
Clayton, California
July 20, 1954

Pacific Fire Rating Bureau
Merchants Exchange Building
San Francisco, California

and

To Whom it may concern:

You are hereby informed that, effective today, we have appointed NARSE & McLENNAN to act as our insurance brokers and to represent us in all matters pertaining to insurance on our properties located adjacent to the properties of Mt. Diablo Quicksilver Co., Ltd. approximately 12 miles East of Concord, California, on the Marsh Creek Road, Contra Costa County, near Clayton, California.

This appointment shall remain in full force and effect until you are officially notified in writing to the contrary.

This authority supersedes all other appointments and/or all letters of authorization on record.

BLONBERG, ZUWALT, LANO,
NICKERSON and FREEMAN

by Victor Blomberg

No 873

10/30 1959

Hansen Blomberg

Expense statement

10/30/59 -

2270

Make No Alteration or Change on Any Check.
If Error is Made, Write New Check.

No 874

11/8 1959

Marsh & McLennan

Cosgrove & Co.

Audit Premium

7/13/58 - 7/13/59

9 MLP 28596

1825

Make No Alteration or Change on Any Check.
If Error is Made, Write New Check.

No 875

11/25 1959

R. H. Kinney -

County Tax

Collector.

1st Installment

1959/0 TAXES

208.23

Make No Alteration or Change on Any Check.
If Error is Made, Write New Check.

August 14, 1954

Walter P. Busher & Company
155 Montgomery Street
San Francisco 4, California

Gentlemen:

Re: Hartford Steam Boiler Policy 66-5872

This is to acknowledge your letter of August 10, 1954,
together with endorsement.

In connection with the change of the name of the
assured and in connection with the expiration date, we
wish to advise that we strongly expect that a new operator
will be on our property by the first of next month. We
will delay making any changes at least until then and
will advise you further if we wish to renew or change the
name of the assured.

Very truly yours,

MT. DIABLO QUICKSILVER CO., LTD.

Harold Blomberg - Secretary

HB

Exhibit 33

THIS AGREEMENT, entered into this 13th day of November, 1954, between MT. DIABLO QUICKSILVER COMPANY, LTD., a Nevada corporation, hereinafter referred to as "Lessor", and CONDERO MINING COMPANY, a Nevada corporation, hereinafter referred to as "Lessee",

W I T N E S S E T H:

WHEREAS, Lessor is the owner of the following described mine and mining property, together with all appurtenances:

DESCRIPTION:

The northeast quarter of the southeast quarter of Section 29 and the south half of the southwest quarter of the northeast quarter of Section 29, Township 1 North, Range 1 East, Mount Diablo Base and Meridian, containing 60 acres, more or less;

EXCEPTING THEREFROM: "That certain syphon pipe leading therefrom to a water trough on the northeast quarter of the southeast quarter of said Section Twenty-nine (29), which said water spring, trough, and pipe are excepted from this deed," as provided for in the deed from Edward A. Howard and Daisy B. Howard, his wife, to Mount Diablo Quicksilver Company, Ltd., a corporation, dated December 29, 1933, and recorded Feb. 1, 1934 (File No. 1060);

And

The northwest quarter (N.W.1/4) of the southeast quarter (S.E.1/4) of Section 29, in Township 1 North of Range 1 East, Mount Diablo Base and Meridian. Said property shall not include the following described property, to wit: that land beginning at the northwest corner of the northwest quarter of the southeast quarter of Section 29, Township 1 North, Range 1 East, Mount Diablo Base and Meridian; thence running southerly along the dividing line between the northeast quarter of the southwest quarter and the northwest quarter of the southeast quarter of said Section 29, a distance of 20 chains to the southwest corner of the northwest quarter of the southeast quarter of Section 29; thence running along the southerly line of the northwest quarter of the southeast quarter of Section 29, a distance of 2.924 chains; thence leaving said line, and running in a northerly direction, a distance of 20.23 chains to the point of beginning.

EXCEPTING from the demised premises the house known as the Blomberg house together with the right to use such water as is necessary for domestic purposes. In the event the option to purchase is exercised then this exception will be without effect and title to the Blomberg house shall pass with the other property.

IN ADDITION Lessee shall have the right to any access road over which Lessor has control.

And

WHEREAS the Lessee desires to lease and to acquire an option to purchase the whole of said mining property above described, which the Lessor is willing to grant upon the terms and subject to the conditions hereinafter set forth,

NOW, THEREFORE, in consideration of the premises and the sum of One Dollar (\$1) paid by the Lessee to the Lessor, receipt of which is hereby acknowledged, the Lessor hereby grants and leases to Lessee the above-described property for the purpose of investigating, exploring, prospecting, drilling, mining, producing, milling, and removing ores, metals, minerals, and values of every kind, and for the purpose of erecting thereon mills, plants and other structures in connection with said purposes, for the term of Ten (10) years from the date hereof with right to renew, upon a sixty (60) day prior written notice to Lessor, for an additional Ten (10) years on the same terms, including the right to apply payments made during the first Ten (10) years on the purchase price if said option to purchase is exercised during the second ten (10) years. These rights shall remain in effect during the period of the lease unless sooner terminated as hereinafter provided.

In consideration of said lease, IT IS HEREBY MUTUALLY

AGREED AS FOLLOWS:

1. RENTAL AND ROYALTY: The Lessee shall pay to the Lessor monthly, as rental for said property, a percentage of the proceeds resulting from the operation of said property by Lessee. This percentage shall be ten per cent (10%) of the money received for ores, metals, minerals, and values mined, saved and sold less freight, insurance, and brokerage, or Two Hundred Dollars (\$200) per month, whichever is greater.

Unless notified as hereafter set forth, Lessee shall sell all flasks of quicksilver produced from the premises; provided, however, that Lessor shall have the option to receive its percentage royalties in kind, i.e. in flasks of quicksilver -- upon Lessor's giving Lessee a ninety (90) day prior written notice of exercise of such option. Similarly Lessor shall have the option by such a 90-day notice to have Lessee resume the sales of all production. Delivery in kind to Lessor shall be f.o.b. the mining property. Lessee agrees to store for Lessor's account any production taken by Lessor as royalty in kind without charge -- title, however, to such flasks of quicksilver for delivery in kind shall be deemed to pass to Lessor at the time Lessor receives royalty statements therefor from Lessee (for insurance and other purposes). Lessee shall supply Lessor with full and complete supporting data with regard to deliveries in kind.

2. OPTION: The Lessor shall and does hereby give and grant unto the Lessee the sole, exclusive and irrevocable right and option to purchase and acquire the whole of the said mining

property above described, upon the payment of the option price, on or before the termination of this lease, and any renewal, and in the manner and upon the due performance of the covenants to be kept and performed by the Lessee, all as herein provided.

3. PURCHASE PRICE: The Lessee, upon the exercise of said option, shall pay the Lessor as a total purchase price for the above-described property, the sum of One Hundred Seventy Thousand Dollars (\$170,000) lawful money of the United States of America. All rental and royalty payments made to Lessor hereunder shall be credited on the purchase price. The balance of the purchase price shall be paid in full upon the exercise of said option and delivery of a good and sufficient deed as herein provided.

For the purpose of crediting royalty payments on the purchase price, in connection with deliveries in kind, the credits shall be based upon the average proceeds per flask sold by Lessee in the particular month involved; provided, however, that if no sales are made by Lessee during any such month, royalty payments as well as credits on the purchase price shall be determined by taking the average of the weekly low quotations for the particular month as set forth in the E. & M. J. Metal and Mineral Markets Magazine (less freight, insurance and brokerage); provided further, that such method shall be applied for the purpose of computing royalties or for any other purpose applicable to the provisions of this agreement.

4. MANNER OF PAYMENT: The royalty payable to Lessor hereunder, shall be payable in monthly installments commencing

on the 15th day of December, 1954, and continuing on the 15th day of each and every month thereafter until the expiration of the term hereof or the earlier termination of this lease. Royalty payments shall be based on receipts from sales of the previous month, on the basis provided for in Paragraph 1 above. Notwithstanding anything to the contrary contained herein, it is agreed that each monthly installment shall be not less than Two Hundred Dollars (\$200). The Lessee shall transmit with the royalty check a full and true statement of the production and sales receipts of the previous month. A representative of the Lessor shall at all times have the right during regular business hours to examine the underground operations and the furnace plant.

5. MINING METHODS AND CONDITIONS: Lessee shall be sole judge as to methods of mining and milling, what constitutes ore, when and if ore is extracted or milled and all other phases of operating the property. All operations conducted by the Lessee upon the property shall be performed in accordance with the laws and regulations of the United States and the State of California and in accordance with good practices in workmanship, mining and milling, particularly with regard to the safety and welfare of workers. The Lessee shall at all times during the existence of this lease maintain a watchman on the premises.

6. POSSESSION: Lessee, its agents, representatives or employees may enter in and upon and take possession of the whole or any part of the property above described, at once; and, may then and there commence any work to explore or mine the property,

in keeping with the tenor of this agreement, that it may deem advisable, and for that purpose, may use any buildings, equipment or mining facilities which may now be situated on the premises, and owned by Mt. Diablo Quicksilver Company, Ltd., with the exception of that certain house noted in the above description of the premises.

The Lessee may use, in working on the demised premises, all supplies now on the demised premises, but, in the event he should remove or dispose of said supplies otherwise than in developing the demised premises, he shall pay the Lessor the reasonable value thereof. During the term of this lease the Lessee may use all tools, machinery and equipment of the Lessor now on the demised premises for the purpose of developing the same and operating and maintaining the same, and shall have the privilege of replacing or remodeling the same, and any structures on the demised premises. An inventory enumerating such tools, machinery or equipment and structures, is attached hereto, marked Exhibit "A" and made a part hereof. Lessee shall maintain the same and replace any that are broken, damaged or worn out, normal wear and tear excepted. Such replacements shall become the property of the Lessor. At the expiration of this lease or in the event of the Lessee vacating the demised premises for any reason, Lessee may remove, as provided in Paragraph 14, any portable tools, machinery, or equipment which Lessee has placed upon the property, or any portable structures which Lessee may have placed upon the property, but Lessee may not remove any permanent structures or any repairs or

replacements to units of equipment or machinery now on the property.

7. INDUSTRIAL INSURANCE: Lessee shall comply with the laws of the State of California for the protection of employees against injury and disease and, in that connection, shall save harmless the Lessor against any damage by reason of such claims. Lessee shall provide and maintain at Lessee's expense fire insurance and other appropriate casualty insurance on all of the structures, machinery, equipment and tools covering the full appraised insurable value thereof for the maximum protection of both Lessor and Lessee, as their interests may appear, and Lessee shall furnish to Lessor certificates of such insurance if required, and the same shall be subject to the approval of Lessor for adequacy of protection.

8. PUBLIC LIABILITY: Lessee shall save Lessor harmless from any liability for property damage, personal injury or death arising from the work, mining or acts performed by Lessee and its employees in connection with the lease and option.

9. LIENS: Lessee shall save Lessor harmless from all liens upon the property made or suffered by Lessee, and in that connection shall post the property in accordance with law, noticing owner's (Lessor's) non-responsibility, before commencing any work.

10. TAXES: Lessee agrees to pay, prior to delinquency, all taxes and assessments, including personal property taxes and

net proceeds of mine taxes, to State, County or School District, or any other government subdivision, with the exception of taxes on royalties paid to Lessor. Taxes shall be prorated as of the date hereof.

11. DEFAULT: Time shall be of the essence of this agreement. In the event of default of any of the payments or covenants herein contained, by Lessee, this lease shall terminate, at the option of the Lessor. If Lessor elects to terminate this agreement by reason of Lessee's default, Lessor shall serve notice of his intention by registered mail, or personal service upon Lessee or its duly authorized agent for service of process. Upon service of notice, Lessee shall have sixty (60) days in which to cure said default. If within said sixty (60) day period the default has not been cured, Lessor may terminate this agreement by giving Lessee notice of such termination, and at that time this agreement and all of the rights of Lessee hereunder shall terminate.

12. PURPOSE: This agreement is a lease and option only, and the Lessee shall have the right to surrender this contract and to discontinue any and all work and payments hereunder at any time, without liability therefor, upon giving Lessor thirty (30) days' prior written notice of intention to so terminate, except that Lessee shall be liable for royalties and amounts due and payable at the date of such termination. Upon demand after surrender, Lessee shall execute and deliver to Lessor a good and sufficient surrender and release of all rights hereunder.

Lessee shall control the discharge of water from the

mine properties in such manner as not to pollute any of the wells on any of the adjoining property or the waters of Marsh Creek or Dunn Creek. Lessee is advised of that certain decision and order of the Water Pollution Control Board of the State of California, dated December 14, 1953, and Lessee agrees to comply in all respects with said order, as the same may be modified, amended or altered from time to time, and with any and all other orders, rules and regulations of any governmental authority in respect of discharge of water from the mine properties.

13. INSPECTION: The owner (Lessor) or his duly authorized agents or representatives shall have the right at all reasonable times to enter upon the said property and inspect the work conducted by the Lessee thereon, or records of the production of the mine.

14. REMOVAL OF EQUIPMENT: In the event of termination of this contract, by surrender or default as provided, the Lessee may, within a period of ninety (90) days thereafter, remove any and all machinery, power plant, equipment, building, track, tools, and supplies placed thereon by Lessee except as provided in Paragraph 6 above. In the event of termination Lessee shall provide Lessor with copies of any mine maps of this property which it may have.

15. ASSIGNMENT: Lessee shall not assign this lease or any interest therein and shall not sublease or underlet the premises, or any part thereof, or any right or privilege appurtenant thereto without the written consent of the Lessor -- and such consent shall not be unreasonably withheld. Notices required

hereunder shall be deemed to be completed when made in writing, deposited in the United States mail, registered, postpaid, addressed to

Lessor: MT. DIABLO QUICKSILVER COMPANY, LTD.
Clayton, California

Lessee: CORDERO MINING COMPANY
131 University Avenue
Palo Alto, California

16. On the exercise of the option herein granted to Lessee to purchase certain property, and the payment of the further purchase price therefor, as hereinabove provided, Lessor shall convey said property to Lessee by grant deed. There has been exhibited to Lessee, and Lessee is fully advised of, that certain preliminary title report of California Pacific Title Insurance Company on said property dated October 28, 1954 (Order No. 190821). It is understood and agreed that at any time after the expiration of three (3) years from the date hereof, or upon payment by Lessee to Lessor of one-half (1/2) of the said purchase price -- whichever event is earlier -- on demand by Lessee to Lessor, Lessor shall take such steps and commence such legal proceedings as it may be advised necessary to clear the title of said land of the exceptions appearing on said title report, and Lessor shall thereafter prosecute said proceedings with all reasonable diligence.

IN WITNESS WHEREOF, Lessor and Lessee have caused these presents to be executed by their officers thereunto

duly authorized, the day and year first above written.

MT. DIABLO QUICKSILVER COMPANY, LTD.

By Vic Blomberg
Vic Blomberg
President

By Harold Blomberg
Harold Blomberg
Secretary

(Corporate Seal)

LESSOR

CORDERO MINING COMPANY

By S. H. Williston
S. H. Williston
Vice President

(Corporate Seal)

Paul Williston
Asst. Secretary

LESSEE

Exhibit 34

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

CLEANUP AND ABATEMENT ORDER NO. R5-2012-XXXX

FOR

**MOUNT DIABLO MERCURY MINE
CONTRA COSTA COUNTY**

This Order is issued to Jack and Carolyn Wessman; the Bradley Mining Co.; the United States Department of Interior; Sunoco, Inc., Mt. Diablo Quicksilver, Co., Ltd., Kennametal Inc., and the California Department of Parks and Recreation (hereafter collectively referred to as Dischargers) pursuant to California Water Code section 13303, which authorizes the Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board), to issue a Cleanup and Abatement Order (Order) and CWC section 13267, which authorizes the Executive Officer to issue Orders requiring the submittal of technical reports.

The Executive Officer finds:

BACKGROUND

1. The Mount Diablo Mercury Mine (Mine Site) is an inactive mercury mine. The Mine is located on the northeast slope of Mount Diablo in Contra Costa County. The Mine and historic working areas are on 80 acres southwest of the intersection of Marsh Creek Road and Morgan Territory Road. The Mine site is adjoined on the south and west by the Mount Diablo State Park and on the north and east by Marsh Creek Road and Morgan Territory Road.
2. The Mine Site consists of an exposed open cut and various inaccessible underground shafts, adits, and drifts. Extensive waste rock piles and mine tailings cover the hill slope below the open cut, and several springs and seeps discharge from the tailings-covered area. Three surface impoundments at the base of the tailings capture most spring flow and surface runoff.
3. Acid mine drainage containing elevated levels of mercury and other metals is being discharged Pond 1, an unlined surface impoundment that periodically overflows discharging contaminants into Horse and Dunn Creeks. Horse and Dunn Creeks are tributaries to Marsh Creek which drains to the San Francisco Bay.
4. Section 303(d) of the Federal Clean Water Act requires states to identify waters not attaining water quality standards (referred to as the 303(d) list). Dunn Creek, located below Mount Diablo Mine, and Marsh Creek, located below Dunn Creek, have been identified by the Central Valley Water Board as an impaired water bodies because of high aqueous concentrations of mercury and metals.

OWNERSHIP AND OPERATOR HISTORY

5. Jack and Carolyn Wessman have owned the Mine Site from 1974 to the present. The Wessmans have made some improvements to reduce surface water exposure to tailings and waste rock, including the construction of a cap over parts of the tailings/waste rock piles. Although these improvements have been made without an engineering design or approved plan, these improvements may have reduced some of the impacts from the Mine Site. However, discharges that contain elevated mercury levels continue to impact the Mine Site and site vicinity.
6. A portion of the mine tailings are located on land owned by Mount Diablo State Park. The California Department of Parks and Recreation is named a Discharger in this Order. The California Department of Parks and Recreation has conducted activities on the property related to surveying and possible fence line adjustments.
7. The mine was discovered by a Mr. Welch in 1863 and operated intermittently until 1877. The Mine reopened in 1930 and was operated until 1936 by the Mt. Diablo Quicksilver Co., Ltd. producing an estimated 739 flasks of mercury. Mt. Diablo Quicksilver no longer exists.
8. Although Mt. Diablo Quicksilver no longer exists, it is named in this order because it likely has undistributed assets, including, without limitation, insurance assets held by the corporation that may be available in response to this order.
9. Bradley Mining Company leased the Mine from Mt. Diablo Quicksilver and operated from 1936 to 1947, producing around 10,000 flasks of mercury. During operations Bradley Mining Company developed underground mine workings, discharged mine waste rock, and generated and discharged mercury ore tailings.
10. In 2008, the United States of America, on behalf of the Administrator of the United States Environmental Protection Agency (U.S. EPA), filed a complaint pursuant to section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, against Bradley Mining Company and Frederick Bradley in his representative capacity as Trustee of the Worthen Bradley Family Trust (Bradley). Prior to the suit U.S. EPA had identified Bradley Mining as a potentially responsible party for costs incurred with the Mount Diablo Mercury Mine Site. The complaint filed by U.S. EPA and the California Department of Justice sought reimbursement and damages associated with various sites, including the Mount Diablo Mercury Mine Site in Contra Costa County, California.
11. In 2012, U.S. EPA, Bradley Mining Company, and Frederick Bradley, in his representative capacity as Trustee of the Worthen Bradley Family Trust, entered into a settlement for all sites set forth in the Administrative Civil Liability Complaint. Under the terms of the Consent Decree, \$50,500 of the funds Bradley received from insurance was allocated to the Mt Diablo Mercury Mine Site, along with 10 percent of future payments made that were linked to Bradley's future income.

12. The Bradley Mining Company still exists, although it claims that it has limited resources and the resources it has are mostly tied up in environmental actions at other former mines. Bradley Mining Company is a named Discharger in this Order.
13. Ronnie B. Smith and partners leased the mine from Mt. Diablo Quicksilver from 1951 to 1954 and produced approximately 125 flasks of mercury by surface mining (open pit mining methods). Successors to the Smith et al. partnership have not been identified and are not named Dischargers in this Order.
14. In 1953, the Defense Minerals Exploration Administration (DMEA) granted the Smith, et al. partners a loan to explore for deep mercury ore. DMEA was created to provide financial assistance to explore for certain strategic and critical minerals. DMEA contracted with private parties to operate the Mine Site under cost-sharing agreements from 1953 to 1954. DMEA was a Federal Government Agency in the United States Department of the Interior and is named as a Discharger in this Order.
15. John L. Jonas and John E. Johnson assumed the DMEA contract in 1954, producing 21 flasks of mercury in less than one year. Their successors have not been found and they are not named Dischargers in this Order.
16. The Cordero Mining Company operated the Mine Site from approximately 1954 to 1956, and was responsible for sinking a shaft, driving underground tunnels that connected new areas to pre-existing mine workings, and discharging mine waste. The amount of mercury production from this time period is unknown. U.S. EPA, Region IX, named Sunoco Inc. a responsible party for Mount Diablo Mercury Mine in the Unilateral Administrative Order for the Performance of a Removal Action, U.S. EPA Docket No. 9-2009-02, due to its corporate relationship to the Cordero Mining Company. Sunoco Inc. is a named Discharger in this Order.
17. The Nevada Scheelite Company, a subsidiary of Kennametal Inc., leased from Mount Diablo Quicksilver Co. and operated the mine in 1956. Minutes of a March 25, 1956 Mount Diablo Quicksilver Co. directors' meeting with managers representing Nevada Scheelite Corporation (Nevada Scheelite) discuss Nevada Scheelite's lease and operations at the mine. Nevada Scheelite apparently operated an unidentified part to the mine from 1956 to 1958. At one point, downstream landowners objected to Nevada Scheelite's discharge of acid mine drainage and that part of the operation was suspended. The amount of production for this period is uncertain. At the time of Nevada Scheelite's lease, it was a wholly-owned subsidiary of Kennametal Inc., with head offices in Latrobe, Pennsylvania. Because of its ownership and control of Nevada Scheelite, Kennametal Inc. is named a Discharger in this Order.
18. Victoria Resources Corporation owned the Mount Diablo Mine from 1960 to 1969. The extent of operations and the amount of production for this period is unknown. However, discharges have occurred from runoff from the mine waste piles and likely springs associated with the mine working. Victoria Resources Corporation no longer exists under that name, Technical Reporting Order No. R5-2009-0870 was issued to Victoria Gold Corporation on December 1, 2009, requiring submittal of a report describing the extent of

Victoria Resources Corporation activities at the mine. Victoria Gold Corporation notified the Board that they have no relationship to Victoria Resources Corporation. Research into the corporate evolution of Victoria Resources Corporation is ongoing.

19. The Guadalupe Mining Company owned the Mine site from 1969 to 1974. The extent of operations and amount of production for this period is unknown. However, discharges have occurred from runoff from the mine waste piles and likely springs associated with the mine working. Guadalupe Mining Company no longer exists and efforts to trace a corporate successor have been unsuccessful.

INVESTIGATIONS

20. In 1989, a technical investigation by J.L. Lovenitti used historical data and focused on Pond 1. The report characterized Pond 1 chemistry, its geohydrochemical setting, the source of contaminants, remedial alternatives, and preliminary remediation cost estimates. The report documents acidic conditions and elevated concentrations greater than primary drinking water standards for mercury, lead, arsenic, zinc, and copper.
21. Between 1995 and 1997, a baseline study of the Marsh Creek Watershed was conducted by Professor Darrell Slotton for Contra Costa County. The study concluded that the Mount Diablo Mercury Mine, and specifically the exposed tailings and waste rock above the existing surface impoundment, are the dominant source of mercury in the watershed.
22. Technical Reporting Order No. R5-2009-0869 was issued on December 1, 2009, to the Dischargers that had been identified at that time, Jack and Carolyn Wessman, Bradley Mining Co, United States Department of the Interior, and Sunoco Inc. The Order required the Dischargers to submit a Mining Waste Characterization Work Plan by March 1, 2010, and a Mining Waste Characterization Report by September 1, 2010.
23. On August 3, 2010, Sunoco submitted a Characterization Report in partial compliance of Order No. R5-2009-0869. The report presented results of Sunoco's investigation to date, summarized data gaps, and proposed future work to complete site characterization. Sunoco Inc. is the only party making an effort to comply with the Order.
24. The Characterization Report concludes that most mercury contamination in the Marsh Creek Watershed originates from the Mount Diablo Mine, is leached from mining waste, and is discharged via overland flow to the Lower Pond (Pond 1) and Dunn Creek.
25. Various investigations have sampled surface water discharging from the mine site. Sunoco submitted a Characterization Report that includes data from two sampling events conducted in the Spring of 2010. In addition, at the end of 2011, Sunoco submitted an Additional Characterization Report that includes data from up to five sampling events. The following summarizes results from the Characterization Report:

Constituent	Water Quality Goal	Background ⁽¹⁾	Mine Waste ⁽²⁾	Pond 1 ⁽³⁾	Dunn Creek Downstream ⁽⁴⁾
TDS (mg/L)	500	225.5	8056	6960	337.5
Sulfate (mg/L)	250	24.5	5660	5465	70.5
Mercury (ug/L)	0.05	0.20	97.6	91	0.69
Chromium (ug/L)	50	5	781.6	22.5	14
Copper (ug/L)	1000	5	202.2	46.5	14
Nickel (ug/L)	100	5	25224	13900	213.5
Zinc (ug/L)	5000	10.5	693.4	351.5	22

(1) Average of two samples collected from My Creek and Dunn Creek above the mine site.

(2) Average of five surface water samples collected immediately below the tailings/waste rock piles.

(3) Average of two samples collected from Pond 1, the settling pond located at the base of the tailings/waste rock piles.

(4) Average of two samples collected from Dunn Creek downstream of the mine site.

26. The data summarized in Finding 20 show that surface drainage from the mine waste contains elevated concentrations of TDS and metals which have caused pollution in the pond and degradation in Dunn Creek. Dunn Creek drains into Marsh Creek. The 1997 Slotton study concluded that Mount Diablo Mercury Mine was the major source of mercury in the Marsh Creek. The Sunoco study confirms the results of the earlier reports.

LEGAL PROVISIONS

27. Section 303(d) of the Federal Clean Water Act requires states to identify waters not attaining water quality standards (referred to as the 303(d) list). Dunn Creek from Mount Diablo Mine to Marsh Creek, and Marsh Creek below Dunn Creek, have been identified by the Central Valley Water Board as impaired water bodies because of high aqueous concentrations of mercury and metals.
28. The Central Valley Water Board is in the process of writing Total Daily Maximum Loads (TMDLs) for Dunn Creek and Marsh Creek.
29. The Water Board's *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, 4th Edition* (Basin Plan) designates beneficial uses of the waters of the State, establishes water quality objectives (WQO) to protect these uses, and establishes implementation policies to implement WQOs. The designated beneficial uses of Marsh Creek, which flows into Sacramento and San Joaquin Delta are domestic, municipal, industrial, and agricultural supply.
30. The beneficial uses of underlying groundwater, as stated in the Basin Plan, are municipal and domestic supply, agricultural supply, industrial service supply, and industrial process supply.

31. Under CWC section 13050, subdivision (q)(1), "mining waste" means all solid, semisolid, and liquid waste materials from the extraction, beneficiation, and processing of ores and minerals. Mining waste includes, but is not limited to, soil, waste rock, and overburden, as defined in Public Resources Code section 2732, and tailings, slag, and other processed waste materials. . . ." The constituents listed in Finding No.21 are mining wastes as defined in CWC section 13050, subdivision (q)(1).
32. Because the site contains mining waste, as described in CWC sections 13050, closure of Mining Unit(s) must comply with the requirements of California Code of Regulations, title 27, sections 22470 through 22510, and with such provisions of the other portions of California Code of Regulations, title 27, that are specifically referenced in that article.
33. Affecting the beneficial uses of waters of the state by exceeding applicable WQOs constitutes a condition of pollution, as defined in CWC section 13050, subdivision (1). The Discharger has caused, or permitted waste to be discharged or deposited, where it has discharged to waters of the State and has created, and continues to threaten to create, a condition of pollution or nuisance.
34. CWC section 13304(a) states that:

"Any person who has discharged or discharges waste into the waters of this state in violation of any waste discharge requirement or other order or prohibition issued by a Regional Water Board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall upon order of the Regional Water Board, clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts. A cleanup and abatement order issued by the state board or a Regional Water Board may require the provision of, or payment for, uninterrupted replacement water service, which may include wellhead treatment, to each affected public water supplier or private well owner. Upon failure of any person to comply with the cleanup or abatement order, the Attorney General, at the request of the board, shall petition the superior court for that county for the issuance of an injunction requiring the person to comply with the order. In the suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the facts may warrant."
35. The State Water Resources Control Board (State Water Board) has adopted Resolution No. 92-49, the *Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under CWC Section 13304*. This Resolution sets forth the policies and procedures to be used during an investigation or cleanup of a polluted site, and requires that cleanup levels be consistent with State Water Board Resolution No. 68-16, the

Statement of Policy With Respect to Maintaining High Quality of Waters in California. Resolution No. 92-49 and the Basin Plan establish cleanup levels to be achieved. Resolution No. 92-49 requires waste to be cleaned up to background, or if that is not reasonable, to an alternative level that is the most stringent level that is economically and technologically feasible in accordance with California Code of Regulations, title 23, section 2550.4. Any alternative cleanup level to background must: (1) be consistent with the maximum benefit to the People of the State; (2) not unreasonably affect present and anticipated beneficial use of such water; and (3) not result in water quality less than that prescribed in the Basin Plan and applicable Water Quality Control Plans and Policies of the State Board.

36. Chapter IV of the Basin Plan contains the *Policy for Investigation and Cleanup of Contaminated Sites*, which describes the Central Valley Water Board's policy for managing contaminated sites. This policy is based on CWC sections 13000 and 13304, California Code of Regulations, title 23, division 3, chapter 15; California Code of Regulations, title 23, division 2, subdivision 1; and State Water Board Resolution Nos. 68-16 and 92-49. The policy addresses site investigation, source removal or containment, information required to be submitted for consideration in establishing cleanup levels, and the basis for establishment of soil and groundwater cleanup levels.
37. The State Water Board's Water Quality Enforcement Policy states in part: "At a minimum, cleanup levels must be sufficiently stringent to fully support beneficial uses, unless the Central Valley Water Board allows a containment zone. In the interim, and if restoration of background water quality cannot be achieved, the Order should require the discharger(s) to abate the effects of the discharge (Water Quality Enforcement Policy, p. 19)."
38. CWC section 13267 states, in part:

"(b)(1) In conducting an investigation, the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or, discharging, or who proposes to discharge waste within its region . . . shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports."

As described in Findings Nos. 5 - 14, the Dischargers are named in this Order because all have discharged waste at the Mine Site through their actions and/or by virtue of their ownership of the Mine Site. The reports required herein are necessary to formulate a plan to remediate the wastes at the Mine Site, to assure protection of waters of the state, and to protect public health and the environment.

39. CWC section 13268 states, in part:

(a)(1) Any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of Section 13267 . . . or falsifying any information provided therein, is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b).

(b)(1) Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.

(c) Any person discharging hazardous waste, as defined in Section 25117 of the Health and Safety Code, who knowingly fails or refuses to furnish technical or monitoring program reports as required by subdivision (b) of Section 13267, or who knowingly falsifies any information provided in those technical or monitoring program reports, is guilty of a misdemeanor, may be civilly liable in accordance with subdivision (d), and is subject to criminal penalties pursuant to subdivision (e).

(d)(1) Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (c) in an amount which shall not exceed five thousand dollars (\$5,000) for each day in which the violation occurs.

As described above, failure to submit the required reports to the Central Valley Water Board according to the schedule detailed herein may result in enforcement action(s) being taken against you, which may include the imposition of administrative civil liability pursuant to CWC section 13268. Administrative civil liability of up to \$5,000 per violation, per day may be imposed for non-compliance with the directives contained herein.

IT IS HEREBY ORDERED that, pursuant to California Water Code section 13267, the Dischargers shall submit the following technical reports:

1. **By December 31, 2012**, form a respondents group to manage and fund remedial actions at the Mount Diablo Mine Site.
2. **By May 1, 2013**, submit a Work Plan and Time Schedule to close the mine tailings and waste rock piles in compliance with California Code of Regulations, title 27, sections 22470 through 22510, and to remediate the site in such a way to prevent future releases to surface and ground waters of Mercury and other Pollutants.
3. **Beginning 90 Days after Regional Water Board approval of the Work Plan and Time Schedule**, submit regular quarterly reports documenting progress in completing remedial actions.
4. **By 31 December 2015**, complete all remedial actions and submit a final construction report.

REPORTING

5. When reporting data, the Dischargers shall arrange the information in tabular form so that the date, the constituents, and the concentrations are readily discernible. The data shall be summarized in such a manner as to illustrate clearly the compliance with this Order.
6. Fourteen days prior to conducting any fieldwork, submit a Health and Safety Plan that is adequate to ensure worker and public safety during the field activities in accordance with California Code of Regulations, title 8, section 5192.
7. As required by the California Business and Professions Code sections 6735, 7835, and 7835.1, all reports shall be prepared by a registered professional or their subordinate and signed by the registered professional.
8. All reports must be submitted to the Central Valley Water Board. Electronic copies of all reports and analytical results are to be submitted over the Internet to the State Water Board Geographic Environmental Information Management System database (GeoTracker) at <http://geotracker.swrcb.ca.gov>. Electronic copies are due to GeoTracker concurrent with the corresponding hard copy. Electronic submittals shall comply with GeoTracker standards and procedures as specified on the State Water Board's website.
9. Notify Central Valley Water Board staff at least five working days prior to any onsite work, testing, or sampling that pertains to environmental remediation and investigation, and is not routine monitoring, maintenance, or inspection.

Any person aggrieved by this action of the Central Valley Water Board may petition the State Water Board to review the action in accordance with CWC section 13320, and California Code of Regulations, title 23, sections 2050, and following. The State Water Board must receive the petition by 5:00 p.m. (PST), 30 days after the date of this Order, except if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or State holiday (including mandatory State furlough days), the petition must be received by the State Water Board by 5:00 p.m. (PST) on the next business day.

Copies of the law and regulations applicable to filing petitions may be found on the Internet at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality, or will be provided upon request.

This Order is effective upon the date of signature.

Ordered by:

PAMELA C. CREEDON, Executive Officer

Date

Exhibit 35

EDGCOMB LAW GROUP

One Post Street, Suite 2100
San Francisco, California 94104
415.692.8144 direct
415.399.1885 fax
abaas@edgcomb-law.com

October 12, 2012

BY EMAIL & U.S. MAIL

Julie Macedo, Esq.
State Water Resources Control Board
Senior Staff Counsel, Office of Enforcement
1001 "I" Street, 16th Floor
P.O. Box 100
Sacramento, CA 95814

Re: Comments by Sunoco, Inc. to the Draft Cleanup and Abatement Order for the Mount Diablo Mercury Mine Located in Contra Costa County

Dear Ms. Macedo:

We represent Sunoco, Inc. ("Sunoco"). This letter follows my telephone conversation with you and Anna Kathryn Benedict, Esq., on October 8, 2012 regarding Sunoco's comments to the Draft Cleanup and Abatement Order ("Draft Order") for the Mount Diablo Mercury Mine ("Site"). The Draft Order was sent to us along with other entities on September 12th by Ms. Benedict, requesting comments to the State Water Resource Control Board ("State Board") by October 12, 2012. On behalf of Sunoco, we appreciate the opportunity to review the Draft Order and respectfully request that the State Board, in conjunction with the Regional Water Quality Control Board Central Valley Region ("Regional Board"), consider the following three (3) comments when drafting the final Cleanup and Abatement Order.

First, the statement in Paragraph No. 16 of the Draft Order, which states "[t]he amount of mercury production from this time period is unknown," is inaccurate. It is our understanding that there was no mercury production during Cordero's 14 months of operations at the Site; and that Cordero was prospecting only and never actually mined mercury from the ground. We also believe that the Regional Board agrees with our understanding. In view of this, we request that the statement be changed to accurately reflect that Cordero did not produce mercury at the Site.

Second, as we discussed over the telephone this week, there are two issues with the table in Paragraph No. 25 of the Draft Order that we request be corrected.

1. the "Background" levels of mercury, chromium, and nickel depicted in the table as 0.20, 5, and 5, respectively, are the detection limits set for the lab equipment and, for each of these chemical elements, the actual sampling results came back as non-detect.

Julie Macedo, Esq.
Re: Comments to Draft CAO
October 12, 2012

Thus, the levels for these elements are actually below what is reported in the table, if they exist at all. Please change these results to non-detect, or "ND."

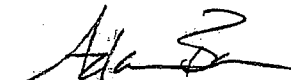
2. The "Water Quality Goal" numbers within the table are municipal supply standards generally used for assessing the potable quality of groundwater. By comparison, the numbers depicted throughout the rest of the table all came from surface water samples, not ground water samples. As a result, the table depicts data results for surface water sampling and compares these results to municipal, or potable, standards. Please change the numbers within the Water Quality Goal column to reflect the State Water Board's surface water standards.

Third, the last sentence of Paragraph No. 26 is confusing because the term "earlier reports" is not defined. It appears that the intent of the paragraph is to focus on the 1997 Slotton study, but the reference to "earlier reports" could be interpreted to mean all earlier reports referenced in the Draft Order, which would be an inaccurate statement. To eliminate this confusion, we suggest changing the term "earlier reports" to "the Slotton study."

Thank you again for the opportunity to comment on the Draft Order. This submission is made solely to correct what we believe to be inaccuracies in certain statements in the Draft Order and is not intended to cover the substance or merits of the Order. As you are aware, Sunoco intends to contest its liability as an alleged PRP at the Site. Therefore, we make this submission without admission or prejudice to, or waiver of, Sunoco's rights and defenses.

Please let us know if you have any question or would like to set up a time to discuss.

Very truly yours,



Adam P. Baas

cc (via email only):
Anna Kathryn Benedict, Esq.
Rick Moss
Ross Atkinson

Exhibit 36

October 10, 2012

RECEIVED

OCT 11 2012

Anna Kathryn Benedict
Senior Staff Counsel
State Water Resources Board
Office of Enforcement
P.O. Box 100
Sacramento, CA 75812-0100

Office of Enforcement

Re: Draft Cleanup and Abatement Order for the Mt. Diablo Mine

Dear Ms. Benedict:

Your letter of September 12, 2012 enclosing the above-captioned draft Order requested "comments or concerns with respect to the parties named in the order." This office represents Kennametal Inc., one of the parties named in the order.

Kennametal should not be named in the order because it is not a Discharger. Neither it, nor any predecessors, ever owned or operated the Mt. Diablo mine. Five sentences in paragraph 17 of the "Background" section of the Order constitute the entire claim by the Board that Kennametal is a Discharger. None of the claims are true and have been refuted. I will address each one in turn.

1. "The Nevada Scheelite Company, a subsidiary of Kennametal Inc., leased from Mount Diablo Quicksilver Co. and operated the mine in 1956." There is not now, and as far as the records show, never has been any entity called Nevada Scheelite Company. Kennametal never had a subsidiary by that name. Therefore it could not have leased or operated the mine.

2. "Minutes of a March 25, 1956 Mount Diablo Quicksilver Co. directors' meeting with managers representing Nevada Scheelite Corporation (Nevada Scheelite) discuss Nevada Scheelite's lease and operations at the mine."

Nevada Scheelite Corporation was a wholly owned subsidiary that was in existence from 1951 to 1957 and engaged in the mining of tungsten ore in Rawhide, Nevada. It never owned, operated or leased a mercury mine anywhere. It never owned, leased or operated a mine anywhere but Rawhide, Nevada. It never had any agreement with Mount Diablo Quicksilver Co. No lease or assignment of lease has been produced. The "managers" referred to in the minutes were never officers of Nevada Scheelite Corporation and had no authority to represent it in any matter. No one was ever authorized by Nevada Scheelite Corporation to negotiate any lease of a

mine in 1956. All these statements are backed by the sworn testimony of the Treasurer of Nevada Scheelite Corporation in 1956 from his deposition on November 2, 2011.

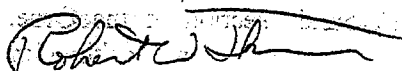
3. "Nevada Scheelite apparently operated an unidentified part to the mine from 1956 to 1958." Apparently to whom? Based on what evidence? Nevada Scheelite Corporation shut down its mining operation in Nevada in 1956 and was dissolved in April 1957.

4. "At the time of Nevada Scheelite's lease, it was a wholly owned subsidiary of Kennametal Inc., with lead offices in Latrobe, Pennsylvania." There is no lease and the sworn testimony of the then Treasurer of the company is that there never could have been such a lease because the company mined only tungsten ore only in Nevada and had no use for mercury.

5. "Because of its ownership and control of Nevada Scheelite, Kennametal Inc. is named a Discharger in this Order." Ownership and control of Nevada Scheelite Corporation does not make Kennametal a Discharger because Nevada Scheelite Corporation was never a Discharger.

Please find enclosed a CD of the video deposition of Mr. Heiderman. Please remove Kennametal's name from the Order.

Very truly yours,



Robert W. Thomson

RWT/dmt

cc: Michelle Keating
Staci Miller

Exhibit 37



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

December 31, 2012

VIA U.S. MAIL & E-MAIL

Adam P. Baas
Edgcomb Law Group
One Post Street, Suite 2100
San Francisco, California 94104
abaas@edgcomb-law.com

**RE: DRAFT CLEANUP AND ABATEMENT ORDER FOR THE MOUNT DIABLO
MERCURY MINE LOCATED IN CONTRA COSTA COUNTY -
RESPONSE TO SUNOCO, INC. COMMENTS**

Dear Mr. Baas:

Thank you for providing comments to the above-referenced draft order. This letter will provide you a response to those comments.

First, the Regional Water Quality Control Board Central Valley Region ("Regional Board") contends that the mercury production during Cordero's 14 months of operation at the site is unknown, but does not concede that there was no mercury production. As such, the order will reflect that there are no records of mercury production and, therefore, the amount of mercury production, if any, from this time period is unknown.

Second, the Regional Board is willing to revise the background levels in the table. However, the Water Quality Goals will be included and will reflect the maximum concentration limits or the most applicable water quality control standards, which protect beneficial uses pursuant to the basin plan.


Finally, the order will reflect that the earlier reports are, in fact, the "Slotton study."

CHARLES R. HOPPIN, CHAIRMAN | THOMAS HOWARD, EXECUTIVE DIRECTOR

1001 I Street, Sacramento, CA 95814 | Mailing Address: P.O. Box 100, Sacramento, CA 95812-0100 | www.waterboards.ca.gov

Again, the Regional Board appreciates your comments. If you have any questions, please do not hesitate to contact me.

Sincerely,



Anna Kathryn Benedict
Senior Staff Counsel
Office of Enforcement

cc: Lisa A. Runyon, Esq. (Via U.S. Mail)
Senior Counsel
Sunoco, Inc.
1735 Market Street, Suite LL
Philadelphia, Pennsylvania 19103-7583

Kennametal Inc. (Via U.S. Mail)
1600 Technology Way
Latrobe, Pennsylvania 15650-4647

California Department of Parks and Recreation (Via U.S. Mail)
Bay Area District
96 Mitchell Canyon Road
Clayton, California 94517

U.S. Department of Interior DMEA (Via U.S. Mail)
1849 C Street, N.W.
Washington, D.C. 20240

Central Valley Region Water Quality Control Board (Via email only)
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670-6114

Pamela Creedon – Executive Officer
Pamela.creedon@waterboards.ca.gov

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Office of the Chief Counsel

Michael Lauffer – Chief Counsel

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Office of Enforcement

Julie Macedo – Senior Staff Counsel

Julie.macedo@waterboards.ca.gov

Exhibit 38



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

December 31, 2012

VIA E-MAIL AND U.S. MAIL

Robert W. Thomson
Babst Calland
Two Gateway Center
Pittsburgh, Pennsylvania 15222
rthomson@babstcalland.com

**RE: DRAFT CLEANUP AND ABATEMENT ORDER FOR THE MOUNT DIABLO
MERCURY MINE LOCATED IN CONTRA COSTA COUNTY –
RESPONSE TO SUNOCO, INC. COMMENTS**

Mr. Thomson:

Thank you for the additional information regarding your client, Kennemetal Inc. I have reviewed the information provided, including the testimony of Mr. George Heideman, taken on November 2, 2011. However, at this time, based on the information available Kennemetal, Inc. will be named in the above-related order based on the work performed at the site by its wholly-owned subsidiary, Nevada Sheelite Company.

At the time of his deposition, Mr. Heideman was 99 years old and admitted he was not involved in the day to day operations at Nevada Sheelite Company and that he did not have any regular contact with those at the mine. He testified that others, such as Ernest Colwell, were in charge at the mine and would have made decisions on contracts, such as the Tide Water Contract. He believes that he would have been told of any decisions related to the site, but admitted it was possible he was not informed or involved in decisions regarding the mine.

Mr. Heideman does admit that Nevada Sheelite Corporation was a wholly-owned subsidiary of Kennemetal Inc. and that the corporation was dissolved in 1957.

As you are aware, this office has meeting minutes from the Mouth Diablo Quicksilver Co. director's meeting dated March 25, 1956 and April 28, 1956 and a contract between Tide Associated Oil Co. to Mr. John Gomes of Nevada Sheelite Corporation that offers

Robert W. Thomson

- 2 -

January 7, 2013

to provide delivery of various petroleum products to the Site over the next year at the listed prices, which is consistent with Nevada Sheelite operating at the site.

Based on the documentation available and Mr. Heideman's acknowledgement that day to day operations were conducted by others without his involvement or input, the Central Valley Water Board will be naming Kennemetal Inc.

If you have any questions, please do not hesitate to contact me.

Sincerely,

/s/ Anna Kathryn Benedict

Anna Kathryn Benedict
Senior Staff Counsel
Office of Enforcement

Robert W. Thomson

- 3 -

January 7, 2013

Central Valley Region Water Quality Control Board

(Via email only)

11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670-6114

Pamela Creedon
Executive Officer

Rick Moss
Assistant Executive Officer

Clean up and Compliance Branch
Ross Atkinson
Victor Izzo
Robert Busby

Robert W. Thomson

- 4 -

January 7, 2013

cc:

State Water Resources Control Board

(Via email only)

Office of Enforcement
Julie Macedo
Senior Staff Counsel

bcc: OE Chron (electronic & hardcopy)

AKB/bkn

Exhibit 39

ORDER OF BUSINESS
Annual Stockholders Meeting
April 28, 1956

1. The Secretary will call the roll ✓ ✓
2. Appoint a committee to examine proxies. ✓ ✓
3. If a majority of stockholders are present, the meeting is declared regularly convened. ✓
4. The Secretary will read the minutes of the previous stockholders meeting ✓ ✓
5. The meeting will be opened for the nomination and election of directors for the ensuing year. ✓

Minutes
Annual stockholders' meeting — April 28, 1956
Mt. Diablo Tunneling Co., Ltd.

Under call of the Board of Directors, the annual stockholders' meeting of the Mt. Diablo Tunneling Co., Ltd., was held at the mine property near Clayton, California on April 28, 1956.

Vic Blomberg presided as Chairman and Harold Blomberg as secretary of the meeting.

The secretary called the roll and found stockholders representing 66,506 shares to be present in person, and stockholders representing 60,422 shares to be present by proxy. The Chairman appointed Al Muni and Raymond Blomberg as a committee to examine proxies. The committee reported all proxies were valid except that of M. D. Finch (50 shares) which was disqualified due to lack of signature. Since a majority of stockholders were present, the meeting was declared to be regularly convened.

The secretary read the minutes of the annual stockholders' meeting of April 17, 1955. Since there were no errors or omissions noted, the minutes were ordered to stand as read.

The meeting was opened for nomination and election of directors for the ensuing year. The following ~~five~~ candidates were nominated: Vic Blomberg, F. W. Cox, Al Muni, B. L. Henry and Dorothy Henning. ~~Since there were no further nominations~~ Results of voting by ballot were as follows: In favor of the candidates — 96,799 votes
NOT VOTED... 30,127 VOTED.

The five candidates receiving the highest number of votes, who would hold office as directors for the ensuing year were declared to be: Vic Blomberg, R W Cook, A E Moore, Dorothy Ganning and W L Hurrey.

The chairman reported on activities since the previous stockholders' meeting of April 17, 1955. His report included the following:

(1) The Corduro Mining Company discontinued active operations on our property during December, 1955.

Up to that time Corduro had invested approximately

\$115,000 in underground development and surface

improvement. During the heavy rains of ~~the~~

December the underground ^{area + shaft} ~~was~~ were flooded, forcing

the lease to pull out ~~its~~ equipment -

(2) The Corduro lease was, ^{subsequently} assigned to Nevada - Scheelite

Corp. Dewatering of the underground areas was started

but was halted due to complaints by ~~near~~ downstream

neighbors. ~~The~~ Dewatering had been started too late

in the season to take advantage of high creek flow.

After several meetings with downstream neighbors, ^{with} ~~with~~

no favorable results ~~no favorable results~~ The lease decided to discontinue

^{on our property} operations ~~on~~ as of March 31, 1956.

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3

The Chairman reported that approximately \$250,000 had been spent on our property in development and rehabilitation costs by our lessees since the time Bledley Mining Co. ~~had~~ left the property, ~~leaving~~ ^{resulting in only} a small ore recovery, ~~appreciable amount of ore recovered~~. It ^{now} appeared extremely ^{unlikely} ~~probable~~ that further exploration would uncover ~~any~~ ^{any} a quantity of ore necessary to maintain a sustained operation, especially in view of the fact that any explorative activity would probably be killed by downstream neighbors. ~~It was the Chairman's opinion that any company~~ In view of the amount of money spent on the property by our former lessees it is apparent that only substantially financed companies could possibly succeed, ~~with profit~~ but no ~~such~~ ^{such} company would likely be interested in view of the constant threat of law suit by downstream neighbors.

The Chairman pointed out that our experience with the small speculative operator had cost our corporation alone approximately \$4000⁰⁰ in legal and other costs over the recent years.

(4)

~~It was the Chairman's sug~~

~~After discussion it was the~~

The Chairman ^{suggested that} ~~further stated~~ the stockholders should seriously consider ~~the~~ the sale of the mine and equipment. He stated ~~that~~, in view of the large amounts expended by our former lessees in development which had produced no favorable results, that ~~it would~~ our corporation could not possibly expect to be able to operate the mine with our present small capital. It appears now that ~~Discussion as to~~ the stockholders would benefit more by selling the property.

Discussion ^{followed} ~~followed~~ regarding the price which the property ^{might} ~~would~~ bring. The Chairman stated that according to two land appraisers in our area we should expect to receive a minimum of \$700 an acre (or approximately \$70,000) for the land alone; and that we might ^{optimistically} expect an additional \$10,000 for the building + equipment. If the ~~mine~~ property were sold as a mine ~~to~~ it would possibly bring more.

After considerable discussion, P. W. Corp moved, seconded by Dorothy Hanning, that the following resolution be ~~approved~~ ^{adopted}:

RESOLVED that the Chairman be authorized ^{enter into preliminary} to ~~negotiate~~ for the sale of the mine properties and obtain the best available cash offer for same, which offer shall be ratified by the stockholders at a subsequent special meeting called for that purpose.

RESOLVED FURTHER, that a price of \$50,000 be asked for the land, machinery and buildings, with a minimum of \$40,000 net after selling expenses.

The motion was unanimously approved and the Chairman announced the resolution to be duly adopted.

Mr. Johnson brought up the matter of the ^{disposition of} equipment which former lessee Jones & Johnson shall jointly with the U.S. Government. Mr. Johnson stated that his partnership has the right to sell the ~~property~~ ^{equipment} now, and that anyone may bid on it. Mr. Johnson suggested that this corporation send ^{his} ~~the~~ partnership a letter to

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the effect that the corporation does not claim interest in any of material or equipment brought and owned jointly by Jones + Johnson, as operators, and the U. S. Government, under the DM EA contract, including property listed in the inventory when Jones + Johnson took over operations from Bonnie B. Smith, et al.

The Chairman stated that the newly elected board of directors would consider and act upon a letter to that effect.

There being no further business, J. E. Johnson moved, seconded by A. E. Morris, that this meeting be closed - Motion unanimously approved -

Exhibit 40

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

CLEANUP AND ABATEMENT ORDER NO. R5-2013-0701

FOR

**MOUNT DIABLO MERCURY MINE
CONTRA COSTA COUNTY**

This Order is issued to Jack and Carolyn Wessman; the Bradley Mining Co.; the U.S. Department of Interior; Sunoco, Inc.; Mt. Diablo Quicksilver, Co.; Ltd., Kennametal Inc. and the California Department of Parks and Recreation (hereafter collectively referred to as Dischargers) pursuant to California Water Code section 13303 which authorizes the Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) to issue a Cleanup and Abatement Order (Order) and CWC section 13267, which authorizes the Executive Officer to issue Orders requiring the submittal of technical reports, and CWC section 7, which authorizes the delegation of the Executive Officer's authority to a deputy, in this case the Assistant Executive Officer.

The Executive Officer finds:

BACKGROUND

1. The Mount Diablo Mercury Mine (Mine Site) is an inactive mercury mine. The Mine is located on the northeast slope of Mount Diablo in Contra Costa County. The Mine and historic working areas are on 80 acres southwest of the intersection of Marsh Creek Road and Morgan Territory Road. The Mine site is adjoined on the south and west by the Mount Diablo State Park and on the north and east by Marsh Creek Road and Morgan Territory Road.
2. The Mine Site consists of an exposed open cut and various inaccessible underground shafts, adits, and drifts. Extensive waste rock piles and mine tailings cover the hill slope below the open cut, and several springs and seeps discharge from the tailings-covered area. Three surface impoundments at the base of the tailings capture most spring flow and surface runoff.
3. Acid mine drainage containing elevated levels of mercury and other metals is being discharged to Pond 1, an unlined surface impoundment that periodically overflows discharging contaminants into Horse and Dunn Creeks. Horse and Dunn Creeks are tributaries to Marsh Creek which drains to the San Francisco Bay.
4. Section 303(d) of the Federal Clean Water Act requires states to identify waters not attaining water quality standards (referred to as the 303(d) list). Dunn Creek, located below Mount Diablo Mine, and Marsh Creek, located below Dunn Creek, have been

identified by the Central Valley Water Board as an impaired water bodies because of high aqueous concentrations of mercury and metals.

5. It is the policy of the State Water Board, and by extension the Central Valley Water Board, that every human being has the right to safe, clean, affordable and accessible water adequate for human consumption, cooking, and sanitary purposes. Dunn Creek and Marsh Creek may impact municipal drinking supply in the area. The current site conditions may constitute a threat to municipal drinking supply beneficial use. Therefore, the Water Board is authorized to protect such uses pursuant to section 106.3 of the Water Code.

OWNERSHIP AND OPERATOR HISTORY

6. Jack and Carolyn Wessman have owned the Mine Site from 1974 to the present. The Wessmans have made some improvements to reduce surface water exposure to tailings and waste rock, including the construction of a cap over parts of the tailings/waste rock piles. Although these improvements have been made without an engineering design or approved plan, these improvements may have reduced some of the impacts from the Mine Site. However, discharges that contain elevated mercury levels continue to impact the Mine Site and site vicinity.
7. A portion of the mine tailings are located on land owned by Mount Diablo State Park. The California Department of Parks and Recreation is named as a Discharger in this Order. The California Department of Parks and Recreation has conducted activities on the property related to surveying and possible fence line adjustments.
8. The mine was discovered by a Mr. Welch in 1863 and operated intermittently until 1877. The Mine reopened in 1930 and was operated until 1936 by the Mt. Diablo Quicksilver Co., Ltd. producing an estimated 739 flasks of mercury. Mt. Diablo Quicksilver no longer exists.
9. Although Mt. Diablo Quicksilver no longer exists, it is named as a Discharger in this order because it likely has undistributed assets, including, without limitation, insurance assets held by the corporation that may be available in response to this order.
10. Bradley Mining Company leased the Mine from Mt. Diablo Quicksilver and operated from 1936 to 1947, producing around 10,000 flasks of mercury. During operations Bradley Mining Company developed underground mine workings, discharged mine waste rock, and generated and discharged ore tailings containing mercury.
11. In 2008 the United States of America, on behalf of the Administer of the United States Environmental Protection Agency (EPA), filed a complaint pursuant to section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, against Bradley Mining Company and Frederick Bradley in his representative capacity as Trustee of the Worthen Bradley Family Trust (Bradley). Prior to the suit the EPA had identified Bradley Mining as a potentially responsible party for the remediation of the Mount Diablo Mercury Mine Site. The complaint filed by the EPA and DOJ sought reimbursement and

damages associated with various sites, including the Mount Diablo Mercury Mine Site in Contra Costa County, California.

12. In 2012 the EPA and Bradley Mining Company and Frederick Bradley in his representative capacity as Trustee of the Worthen Bradley Family Trust entered into a settlement for all sites set forth in the complaint. Under the terms of the Consent Decree \$50,500 of the funds Bradley received from insurance was allocated to the Mt Diablo Mercury Mine Site, along with 10 percent of future payments made that were linked to Bradley's future income.
13. The Bradley Mining Company still exists, although it claims that it has limited resources and the resources it has are mostly tied up in environmental actions at other former mines. Bradley Mining Company is a named Discharger in this Order.
14. Ronnie B. Smith and partners leased the mine from Mt. Diablo Quicksilver from 1951 to 1954 and produced approximately 125 flasks of mercury by surface mining (open pit mining methods). Successors to the Smith et al. partnership have not been identified and are not named as Dischargers in this Order.
15. In 1953, the Defense Minerals Exploration Administration (DMEA) granted the Smith, et al. partners a loan to explore for deep mercury ore. The DMEA was created to provide financial assistance to explore for certain strategic and critical minerals. The DMEA contracted with private parties to operate the Mine Site under cost-sharing agreements from 1953 to 1954. The DMEA was a Federal Government Agency in the US Department of the Interior and is named as a Discharger in this Order.
16. John L. Jonas and John E. Johnson assumed the DMEA contract in 1954, producing 21 flasks of mercury in less than one year. Their successors have not been found and they are not named Dischargers in this Order.
17. The Cordero Mining Company operated the Mine Site from approximately 1954 to 1956, and was responsible for sinking a shaft, driving underground tunnels that connected new areas to pre-existing mine workings, and discharging mine waste. There is no record of mercury production for this time period and the amount of mercury production, if any, from this time period is unknown. The United States Environmental Protection Agency (USEPA), Region IX, named Sunoco Inc. a responsible party for Mount Diablo Mercury Mine in the Unilateral Administrative Order for the Performance of a Removal Action, USEPA Docket No. 9-2009-02, due to its corporate relationship to the Cordero Mining Company. Sunoco Inc. is a named Discharger in this Order.
18. Nevada Scheelite Corporation, a subsidiary of Kennametal Inc., leased from Mount Diablo Quicksilver and operated the mine in 1956. Minutes of a 25 March 1956 Mount Diablo Quicksilver Co Directors' Meeting with managers representing Nevada Scheelite Corporation discuss Nevada Scheelite's lease and operations at the mine. Nevada Scheelite apparently operated an unidentified part to the mine from 1956 to 1958. At one point, downstream landowners objected to Nevada Scheelite's discharge of acid mine drainage and that part of the operation was suspended. The amount of production for this

period is uncertain. At the time of Nevada Scheelite's lease, it was a wholly owned subsidiary of Kennametal Inc. with its headquarters in Latrobe Pennsylvania. Because of its ownership and control of Nevada Scheelite, Kennametal Inc. is named a Discharger in this Order.

19. Victoria Resources Corp. owned the Mount Diablo Mine from 1960 to 1969. The extent of operations and the amount of production for this period is unknown. However, discharges have occurred from runoff from the mine waste piles and likely springs associated with the mine working. Victoria Resources Corp. no longer exists under that name, Technical Reporting Order No. R5-2009-0870 was issued to Victoria Gold Corp. on December 1, 2009, requiring submittal of a report describing the extent of Victoria Resources activities at the mine. Victoria Gold Corp. notified the Board that they have no relationship to Victoria Resources Inc. Research into the corporate evolution of Victoria Resources Inc. is ongoing.
20. The Guadalupe Mining Company owned the Mine site from 1969 to 1974. The extent of operations and amount of production for this period is unknown. However, discharges have occurred from runoff from the mine waste piles and likely springs associated with the mine working. Guadalupe Mining Company no longer exists and efforts to trace a corporate successor have been unsuccessful.

INVESTIGATIONS

21. In 1989, a technical investigation by JL Lovenitti used historical data and focused on Pond 1. The report characterized Pond 1 chemistry, its geohydrochemical setting, the source of contaminants, remedial alternatives and preliminary remediation cost estimates. The report documents acidic conditions and elevated concentrations of mercury, lead, arsenic, zinc, and copper that are greater than primary drinking water standards.
22. Between 1995 and 1997, a baseline study of the Marsh Creek Watershed was conducted by Prof. Darrell Slotton for Contra Costa County. The study concluded that the Mount Diablo Mercury Mine and specifically the exposed tailings and waste rock above the existing surface impoundment are the dominant source of mercury in the watershed.
23. Technical Reporting Order No. R5-2009-0869 was issued on 1 December 2009 to the Dischargers that had been identified at that time, Jack and Carolyn Wessman, Bradley Mining Co, US Department of the Interior, and Sunoco Inc. The Order required the Dischargers to submit a Mining Waste Characterization Work Plan by 1 March 2010 and a Mining Waste Characterization Report by 1 September 2010.
24. On 3 August 2010 Sunoco submitted a Characterization Report in partial compliance of Order No. R5-2009-0869. The report presented results of Sunoco's investigation to date, summarized data gaps and proposed future work to complete site characterization. Sunoco Inc. is the only party making an effort to comply with the Order.

25. The Characterization Report concludes that most mercury contamination in the Marsh Creek Watershed originates from the Mount Diablo Mine, is leached from mining waste and discharged via overland flow to the Lower Pond (Pond 1) and Dunn Creek.
26. Various investigations have sampled surface water discharging from the mine site. Sunoco submitted a Characterization Report that includes data from two sampling events conducted in the Spring of 2010. In addition, at the end of 2011 Sunoco submitted an Additional Characterization Report that includes data from up to five sampling events. The following summarizes results from the Characterization Report:

Constituent	Water Quality Goal (MCL)	Background ⁽²⁾	Mine Waste ⁽³⁾	Pond 1 ⁽⁴⁾	Dunn Creek Downstream ⁽⁵⁾
TDS (mg/L)	500 - 1500	225.5	8056	6960	337.5
Sulfate (mg/L)	500	24.5	5660	5465	70.5
Mercury (ug/L)	2	<0.20 ⁽¹⁾	97.6	91	0.69
Chromium (ug/L)	50	<5 ⁽¹⁾	781.6	22.5	14
Copper (ug/L)	1300	5	202.2	46.5	14
Nickel (ug/L)	100	<5 ⁽¹⁾	25224	13900	213.5
Zinc (ug/L)		10.5	693.4	351.5	22

(1) Non-detect result, stated value reflects the method detection limit.

(2) Average of two samples collected from My Creek and Dunn Creek above the mine site.

(3) Average of five surface water samples collected immediately below the tailings/waste rock piles.

(4) Average of two samples collected from Pond 1, the settling pond located at the base of the tailings/waste rock piles.

(5) Average to two samples collected from Dunn Creek downstream of the mine site.

27. The limited population of recent samples summarized in Finding 26 above demonstrates that water draining from the mine waste, collected in Pond 1 and in Dunn Creek downstream of the mine all have been impacted by increased concentrations of salts and metals including mercury. Dunn Creek drains into Marsh Creek. The 1997 Slotton study concluded that Mount Diablo Mercury Mine was the major source of mercury in the Marsh Creek, the Sunoco study confirms the Slotton results.

LEGAL PROVISIONS

28. Section 303(d) of the Federal Clean Water Act requires states to identify waters not attaining water quality standards (referred to as the 303(d) list). Dunn Creek from Mount Diablo Mine to Marsh Creek and Marsh Creek below Dunn Creek have been identified by the Central Valley Water Board as an impaired water bodies because of high aqueous concentrations of mercury and metals.

29. The Central Valley Regional Board is in the process of writing Total Daily Maximum Loads (TMDLs) for Dunn Creek and Marsh Creek.
30. The Water Board's *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, 4th Edition* (Basin Plan) designates beneficial uses of the waters of the State, establishes water quality objectives (WQOs) to protect these uses, and establishes implementation policies to implement WQOs. The designated beneficial uses of Marsh Creek, which flows into Sacramento and San Joaquin Delta are domestic, municipal, industrial and agricultural supply.
31. The beneficial uses of underlying groundwater, as stated in the Basin Plan, are municipal and domestic supply, agricultural supply, industrial service supply, and industrial process supply.
32. Under CWC section 13050, subdivision (q)(1), "mining waste" means all solid, semisolid, and liquid waste materials from the extraction, beneficiation, and processing of ores and minerals. Mining waste includes, but is not limited to, soil, waste rock, and overburden, as defined in Public Resources Code section 2732, and tailings, slag, and other processed waste materials.... The constituents listed in Finding No. 21 are mining wastes as defined in CWC section 13050, subdivision (q)(1).
33. Because the site contains mining waste as described in CWC sections 13050, closure of Mining Unit(s) must comply with the requirements of California Code of Regulations, title 27, sections 22470 through 22510 and with such provisions of the other portions of California Code of Regulations, title 27 that are specifically referenced in that article.
34. Affecting the beneficial uses of waters of the state by exceeding applicable WQOs constitutes a condition of pollution as defined in CWC section 13050, subdivision (1). The Discharger has caused or permitted waste to be discharged or deposited where it has discharged to waters of the state and has created, and continues to threaten to create, a condition of pollution or nuisance.
35. CWC section 13304(a) states that: *"Any person who has discharged or discharges waste into the waters of this state in violation of any waste discharge requirement or other order or prohibition issued by a Regional Water Board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall upon order of the Regional Water Board, clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts. A cleanup and abatement order issued by the state board or a Regional Water Board may require the provision of, or payment for, uninterrupted replacement water service, which may include wellhead treatment, to each affected public water supplier or private well owner. Upon failure of any person to comply with the cleanup or abatement order, the Attorney General, at the*

request of the board, shall petition the superior court for that county for the issuance of an injunction requiring the person to comply with the order. In the suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the facts may warrant."

36. The State Water Resources Control Board (State Board) has adopted Resolution No. 92-49, the *Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under CWC Section 13304*. This Resolution sets forth the policies and procedures to be used during an investigation or cleanup of a polluted site and requires that cleanup levels be consistent with State Board Resolution No. 68-16, the *Statement of Policy With Respect to Maintaining High Quality of Waters in California*. Resolution No. 92-49 and the Basin Plan establish cleanup levels to be achieved. Resolution No. 92-49 requires waste to be cleaned up to background, or if that is not reasonable, to an alternative level that is the most stringent level that is economically and technologically feasible in accordance with California Code of Regulations, title 23, section 2550.4. Any alternative cleanup level to background must: (1) be consistent with the maximum benefit to the people of the state; (2) not unreasonably affect present and anticipated beneficial use of such water; and (3) not result in water quality less than that prescribed in the Basin Plan and applicable Water Quality Control Plans and Policies of the State Board.
37. Chapter IV of the Basin Plan contains the *Policy for Investigation and Cleanup of Contaminated Sites*, which describes the Central Valley Water Board's policy for managing contaminated sites. This policy is based on CWC sections 13000 and 13304, California Code of Regulations, title 23, division 3, chapter 15; California Code of Regulations, title 23, division 2, subdivision 1; and State Water Board Resolution Nos. 68-16 and 92-49. The policy addresses site investigation, source removal or containment, information required to be submitted for consideration in establishing cleanup levels, and the basis for establishment of soil and groundwater cleanup levels.
38. The State Board's Water Quality Enforcement Policy states in part: "At a minimum, cleanup levels must be sufficiently stringent to fully support beneficial uses, unless the Central Valley Water Board allows a containment zone. In the interim, and if restoration of background water quality cannot be achieved, the Order should require the discharger(s) to abate the effects of the discharge (Water Quality Enforcement Policy, p. 19)."
39. CWC section 13267 states, in part:

"(b)(1) In conducting an investigation, the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or, discharging, or who proposes to discharge waste within its region . . . shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports."

As described in Findings Nos. 5 – 14, the Dischargers are named in this Order because all have discharged waste at the Mine Site through their actions and/or by virtue of their ownership of the Mine Site. The reports required herein are necessary to formulate a plan to remediate the wastes at the Mine Site, to assure protection of waters of the state, and to protect public health and the environment.

40. CWC section 13268 states, in part:

(a)(1) Any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of Section 13267 . . . or falsifying any information provided therein, is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b).

(b)(1) Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.

(c) Any person discharging hazardous waste, as defined in Section 25117 of the Health and Safety Code, who knowingly fails or refuses to furnish technical or monitoring program reports as required by subdivision (b) of Section 13267, or who knowingly falsifies any information provided in those technical or monitoring program reports, is guilty of a misdemeanor, may be civilly liable in accordance with subdivision (d), and is subject to criminal penalties pursuant to subdivision (e).

(d)(1) Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (c) in an amount which shall not exceed five thousand dollars (\$5,000) for each day in which the violation occurs.

As described above, failure to submit the required reports to the Central Valley Water Board according to the schedule detailed herein may result in enforcement action(s) being taken against you, which may include the imposition of administrative civil liability pursuant to CWC section 13268. Administrative civil liability of up to \$5,000 per violation per day may be imposed for non-compliance with the directives contained herein.

IT IS HEREBY ORDERED that, pursuant to California Water Code section 13304 and 13267, the Dischargers, their agents, successors, and assigns, shall investigate the discharges of waste, clean up the waste, and abate the effects of the waste, within 30 days of entry of this order, from Mount Diablo Mercury Mine (Mine Site). The work shall be completed in conformance with California Code of Regulations, title 27, sections 22470 through 22510, State Board Resolution No. 92-49 and with the Regional Water Board's Basin Plan (in particular the Policies and Plans listed within the Control Action Considerations portion of Chapter IV), other applicable state and local laws, and consistent with HSC Division 20, chapter 6.8. Compliance with this requirement shall include, but not be limited to, completing the tasks listed below.

1. **The Discharger shall submit the following technical reports:**
 - a. **By 30 June 2013**, form a respondents group to manage and fund remedial actions at the Mount Diablo Mine Site or independently take liability to implement the remedial actions in this Order. On or before the **30 June 2013** submit a letter or report on any agreement made between the responsible parties. If no agreement is made between the parties, then submit a document stating no agreement has been made. Any agreement shall include all the signatures of the responsible parties agreeing to the respondents group.
 - b. **By 1 October 2013**, submit a Work Plan and Time Schedule to close the mine tailings and waste rock piles in compliance with California Code of Regulations, title 27, sections 22470 through 22510 and to remediate the site in such a way to prevent future releases to surface and ground waters of Mercury and other Pollutants.
 - c. **Beginning 90 Days after Regional Board approval of the Work Plan and Time Schedule**, submit regular quarterly reports documenting progress in completing remedial actions.
2. **By 31 December 2015**, complete all remedial actions and submit a final construction report.
3. Any person signing a document submitted under this Order shall make the following certification:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my knowledge and on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."
4. Pursuant to Section 13304(c)(1), the Discharger shall reimburse the Regional Water Board for reasonable costs associated with oversight of the cleanup of the sites subject to this Order. Failure to do so upon receipt of a billing statement from the State Water Board shall be considered a violation of this Order.

REPORTING

5. When reporting data, the Dischargers shall arrange the information in tabular form so that the date, the constituents, and the concentrations are readily discernible. The data shall be summarized in such a manner as to illustrate clearly the compliance with this Order.

6. Fourteen days prior to conducting any fieldwork, submit a Health and Safety Plan that is adequate to ensure worker and public safety during the field activities in accordance with California Code of Regulations, title 8, section 5192.
7. As required by the California Business and Professions Code sections 6735, 7835, and 7835.1, all reports shall be prepared by a registered professional or their subordinate and signed by the registered professional.
8. All reports must be submitted to the Central Valley Water Board. Electronic copies of all reports and analytical results are to be submitted over the Internet to the State Water Board Geographic Environmental Information Management System database (GeoTracker) at <http://geotracker.swrcb.ca.gov>. Electronic copies are due to GeoTracker concurrent with the corresponding hard copy. Electronic submittals shall comply with GeoTracker standards and procedures as specified on the State Water Board's web site.
9. Notify Central Valley Water Board staff at least five working days prior to any onsite work, testing, or sampling that pertains to environmental remediation and investigation and is not routine monitoring, maintenance, or inspection.

NOTIFICATIONS

10. No Limitation on Central Valley Water Board Authority-This Order does not limit the authority of the Central Valley Water Board to institute additional enforcement actions and/or to require additional investigation and cleanup of the site consistent with the Water Code. This Order may be revised by the Executive Office or her delegate as additional information becomes available.
11. Enforcement Notification-Failure to comply with requirements of this Cleanup and Abatement Order may subject the Discharger to additional enforcement action, including, but not limited to, the imposition of administrative civil liability pursuant to Water Code sections 13268 and 13350, or referral to the Attorney General of the State of California for injunctive relief or civil or criminal liability. Pursuant to Water Code section 13350, \$5,000 in administrative civil liability may be imposed for each day in which the violation(s) occurs under Water Code section 13304; and pursuant to Water Code section 13268, \$1,000 in administrative civil liability may be imposed for each day in which the violation(s) occurs under Water Code section 13267.

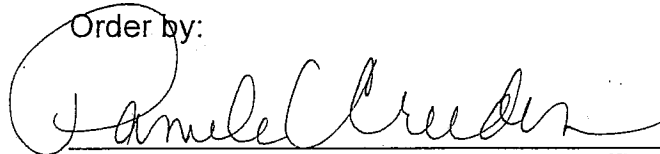
Any person aggrieved by this action of the Central Valley Water Board may petition the State Water Board to review the action in accordance with CWC section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday (including mandatory furlough days), the petition must be received by the State Water Board by 5:00 p.m. on the next business day.

16 April 2013

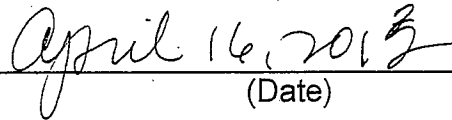
Copies of the law and regulations applicable to filing petitions may be found on the Internet at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request.

This Order is effective upon the date of signature.

Order by:

A handwritten signature in cursive script, appearing to read "Pamela C. Crendon", is written over a horizontal line.

PAMELA C. CREEDON, Executive Officer

A handwritten date "April 16, 2013" is written in cursive script over a horizontal line.

(Date)

Exhibit 41

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Sunoco's Story



The Beginning in Ohio

Sunoco got its start on March 27, 1886, when Joseph Newton Pew and Edward O. Emerson, partners in The Peoples Natural Gas Company in Pittsburgh, Pennsylvania, made a bold move to diversify their business.

Within a few years, the company had acquired pipelines, leases and storage tanks – and was emerging as one of Ohio's leading suppliers of crude oil. On March 17, 1890, it became The Sun Oil Company of Ohio and was producing, transporting and storing oil as well as refining, shipping and marketing petroleum products.

Years of Innovation

In 1916, the Sun Shipbuilding and Dry Dock Company was established, a subsidiary that took the company into the shipbuilding business. In 1920, Sun opened its first service station in Ardmore, Pennsylvania, and then another in Toledo, Ohio. The name changed to Sun Oil Company in 1922 to better identify the company with its business. On November 12, 1925, Sun went public – its stock appearing for the first time on the New York Stock Exchange.

Before the decade was over, Sun was in the oilfield equipment business with the 1929 formation of Sperry-Sun, a joint venture with Sperry Gyroscope. One of the most dramatic events of the 1930s for the company – and the refining industry – took place when Sun placed on stream the world's first large-scale, commercial catalytic cracking plant in Marcus Hook, Pennsylvania, in 1937.

The mining business attracted Sun in 1941, when Sun formed the Cordero Mining Company in Nevada to supply mercury for Sunoco motor oils. The metal proved vital during the World War II effort. So, too, did Sun Shipbuilding and Dry Dock Company – which turned out 40% of all wartime tankers built or reconverted.



Expanding North and South

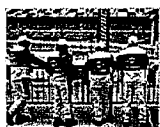
The company expanded north and south in the 1950s. In Canada, Sun started a 15,000-barrels-per-day refinery in Sarnia, Ontario. And, in Venezuela beginning in 1957, Venezuelan Sun Oil Company produced more than 1 billion barrels of oil from Lake Maracaibo before ceasing operations in 1975 when the Venezuelan government nationalized Sun's holdings.

Back in the States, 1958 was the year Sun introduced the Custom Blending Pump, a novel system for dispensing a choice of five octane grades of gasoline from a single pump. It revolutionized the method of marketing gasoline, and a model of the pump is on display at the Smithsonian Institution.



Sun Reshapes – and Later Renames

Major restructuring reshaped the company in 1975, when it organized into 14 operating units, two property companies and a non-operating parent company. This was accompanied by a move to new corporate headquarters in Radnor, Pennsylvania. Reflecting the diversification of the company, Sun Oil Company was renamed Sun Company, Inc., in 1976.



Sunoco, the Racing Fuel of Choice

Sunoco raised the visibility of its brand significantly in 2004 with a long-term deal to be the Official Fuel of NASCAR®. Already the authorized gasoline manufacturer for more than 30 racing series, Sunoco added NASCAR's Sprint, Nationwide and Craftsman Truck series to that list. More recently, Sunoco established a partnership to become the Official Fuel of INDYCAR, the most popular open-wheel racing league in North America.

Today, Sunoco is known as a company on the move – constantly innovating, evolving, and always delivering. Sunoco has served its shareholders, customers and employees well for over 125 years and continues to be the premier provider of transportation fuels in its markets.

Sunoco Joins Energy Transfer Partners

In 2012, Sunoco transformed its business to focus on logistics and transportation fuels and then merged with Energy Transfer Partners, one of the largest natural gas and natural gas distribution companies in the United States. A Texas-based energy company that began in 1995 as a small intrastate natural gas pipeline company, Energy Transfer is now one of the country's fastest-growing natural gas and natural gas liquids transportation companies with widespread business operations that are highly regarded throughout the energy industry and the investment community. Energy Transfer owns and operates a diversified portfolio of energy assets. Our operations include the gathering, treating, processing, marketing and transportation of natural gas and natural gas liquids.